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IN THE

Supreme Court of the United States

October Term, 1949. No. 328

ROLAND J. CHRISTY,
Petitioner,

v.

SAMUEL D. CONVER, THOMAS A. FOULKE, SAMUEL H. HIGH, JR., ROGER B. REYNOLDS AND FRANKLIN L. WRIGHT, CONSTITUTING THE COUNTY BOARD OF LAW EXAMINERS OF MONTGOMERY COUNTY.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully represents:

I. SUMMARY STATEMENT

The petitioner, Roland J. Christy, is a member in good standing of the Bar of the Supreme Court of Pennsylvania, and of the Philadelphia Bar, having been admitted in 1934 (R. 3a-4a).

The Pennsylvania *Act of July 11, 1923, P. L. 1069** provides "That admission now had or that may hereafter be had to practice as an attorney-at-law in the Supreme Court of this Commonwealth shall, upon the approval of the local examining board, qualify such attorney for admission to practice as an attorney-at-law in every other court of this Commonwealth . . .".

In 1935, petitioner became a resident of Montgomery County, Pennsylvania, and applied to "the local examining board", i.e. the County Board of Law Examiners of Montgomery County, for its approval of his admission to the Bar of the courts of that county (R. 7a-9a). He was not approved (R. 9a) although the court concedes his good moral character (R. 98a-99a). Petitioner has maintained a law office in Montgomery County continuously since August 26, 1939 (R. 50a, 54a, 59a-60a) except during the period from October 1943 to February 1946 (R. 56a-59a) when he was in active military service as a U. S. naval officer (R. 14a). Finally in 1948, he filed a complaint in mandamus to compel the Board of Law Examiners of Montgomery County to act on his application (R. 11a-12a). While this suit was pending, the Board acted, and denied the application on the sole ground (R. 13a-14a, 46a) that petitioner had not complied with a rule of the Montgomery County courts which provides:

> "Such applicant shall also deliver to the said Board a declaration signed by him, setting out that

* The text of this statute, and of the Act of May 8, 1909, P. L. 475, which the Act of 1923 amended, are printed in the Appendix to this petition.

he intends permanently to practice in this county, and that he will, within three weeks of his admission, open and maintain his principal office therein, and that failure to do so, or removal of his principal office to another county shall be construed as a request by him to have his name stricken from the Roll of the Bar of this county. If the said Board shall approve the applicant this declaration shall be attached by the Board to their certificate recommending his admission, which shall be produced in open court when his motion for admission is made, and shall be filed thereafter with the prothonotary." (R. 5a-6a)

Petitioner then filed a petition with the Court of Common Pleas of Montgomery County praying for his admission to its bar (R. 3a-15a). The court treated this as an appeal from the action of the county board of law examiners (R. 1a). The board filed an answer (R. 42a) and a hearing was held (R. 83a-94a). Petitioner attacked the "principal office rule" as "arbitrary and unreasonable" (R. 97a-98a). The court sustained the board and the rule (R. 98a) and refused to admit petitioner to the bar of the court (R. 100a). The court conceded that "There seems to be no doubt that Mr. Christy meets all of our requirements so far as his scholastic and legal attainments and his good moral character, are concerned." (R. 98a-99a)

On appeal to the Supreme Court of Pennsylvania, petitioner added to his contention that the "principal office rule" is invalid because arbitrary and unreasonable the additional point that this rule violates the due process clause of the Fourteenth Amendment (R. 112). The Supreme Court sustained the validity of the rule, decided the constitutional question adversely to petitioner and affirmed the order of the common pleas court (R. 112).

II. OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania (R. 109a) is officially reported as *Christy Case*, 362 Pa. 347, and is also reported in 67 A. 2d, 85. The opinions of the court of common pleas are in the record: R. 95a-102a.

III. JURISDICTION

1. The jurisdiction of this Court is invoked under Title 28, United States Code, section 1257(3). The jurisdiction of this Court is sustained by *Re Summers* (1945) 325 U. S. 561.

2. The judgment of the Supreme Court of Pennsylvania was entered on June 24, 1949 (R. 107a).

3. The federal question sought to be reviewed was first raised in the Supreme Court of Pennsylvania in petitioner's brief in the "statement of questions involved", as follows: "3. Is the principal office rule an unreasonable regulation which violates appellant's rights under the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution?" The question was argued in the brief. The Supreme Court of Pennsylvania considered the question and decided it adversely to petitioner. In its opinion the Supreme Court of Pennsylvania said:

> "Under the fifth heading of appellant's brief it is contended that 'The principal office rule violates the due process clause of the 14th Amendment to the Federal Constitution.' We must reject the contention. '. . . due process of law and the equal protection of the laws are secured if the laws operate on all alike and do not subject the individual to an arbitrary exercise of the powers of government . . .' Duncan v. Missouri, 152 U. S. 377, 382, 14 S. Ct. 570, 38 L.Ed.

485 (1893). The principal office rule does not discriminate against appellant in favor of any other applicant for admission; it applies to all candidates for admission to the Montgomery County bar. It is not in the class of unreasonable and unnecessary restrictions on the pursuit of an occupation within the rule considered in Liggett Co. v. Baldridge, 278 U. S. 105, 113."

(R. 112a) 362 Pa. 347, 351; 67 A. 2d 85, 87.

The Supreme Court of Pennsylvania specifically decided, as set forth in the syllabus of the official report, "4. A rule of court which provides that a member of the bar of the Supreme Court of Pennsylvania may not be admitted to the bar of the court of a county in which he does not maintain his principal office does not violate the due process clause of the Fourteenth Amendment to the Federal Constitution.

IV. QUESTIONS PRESENTED

1. Does a rule of a county court which prohibits admission to its bar of a lawyer who does not promise to maintain his principal office in the county violate the due process clause of the Fourteenth Amendment when applied to a lawyer who has satisfied all of the state's requirements for practicing law and who is a member in good standing of the bar of the highest court in the state?

2. Does such a rule violate the due process clause when applied to a lawyer who is not only a member of the bar of the state's highest court but is also a resident of and maintains a law office in the county?

V. SPECIFICATION OF ERRORS

The Supreme Court of Pennsylvania erred:

1. In holding that the Montgomery County rule of court (which prohibits admission to its bar of a member of the bar of the Supreme Court of Pennsylvania who does not promise to maintain his principal office in the county) does not violate the due process clause of the Fourteenth Amendment to the Federal Constitution.

2. In affirming the order of the Court of Common Pleas of Montgomery County.

VI. REASONS FOR GRANTING THE WRIT

1. The Montgomery County "principal office rule" arbitrarily prevents petitioner from practicing law in the courts of that county although he has complied with all the educational requirements established in Pennsylvania for admission to the bar and is of good moral character. He has the right to represent clients before the Supreme Court of Pennsylvania but he is denied the right to represent clients in the Montgomery County courts. This is a serious deprivation of property to petitioner who is debarred (if not disbarred) by a court which concedes "Mr. Christy meets all of our requirements so far as his scholastic and legal attainments and his good moral character, are concerned." (R. 98a-99a).

The effect of this rule of court is to create a monopoly in the handling of all legal business in the Montgomery County courts for the sole benefit of the little group of lawyers who constitute the Montgomery County Bar, each of whom has his "principal office" inside the geographical county lines; and to exclude petitioner and all other qualified Pennsylvania lawyers whose principal offices are in the other 66 counties in the state. Further, if the decision of the Supreme Court of Pennsylvania stands, every other

county in Pennsylvania may adopt a similar "principal office rule" and then petitioner's right to practice law will be reduced to practicing in one county. In the only other state in which an appellate court has passed upon a somewhat similar attempt by means of a local court rule to favor local counsel, the rule was held to be arbitrary and unreasonable and consequently invalid: *Meyer v. Brinsky* (1935), 129 Ohio St. 371, 195 N.E. 702.

That the practice of law (by one who has met the state's qualifications for admission) is within the protection of the Fourteenth Amendment is shown by the cases holding that one may not be disbarred without just cause and due process of law: *Ex parte Garland* (1866) 4 Wall. 353, 379-80; *Bradley v. Fisher* (1871) 13 Wall. 335, 354-55; *Ex parte Robinson* (1873) 19 Wall. 505; *Ex parte Wall* (1882) 107 U. S. 265, 290; *Selling v. Radford* (1917) 243 U. S. 46, 50-51. The power of a court to determine who to admit to its bar "is not an arbitrary and despotic one . . . it is the duty of the court to exercise . . . a sound and just judicial discretion." *Ex parte Secombe* (1857) 19 How. 9, 13. Qualifications which "have no relation to such calling or profession . . . can operate to deprive one of his right to pursue a lawful vocation:" *Dent v. West Virginia* (1889) 129 U. S. 114, 122. "None of the cases sustains the proposition that . . . a privileged class can be created and be then given a monopoly of the right to work in a special or favored position": *Smith v. Texas* (1914) 233 U. S. 630, 638.

Requiring an applicant for a barber's license to be a county resident for a prescribed period discriminates in favor of residents of the county and violates the Fourteenth Amendment: *City of New Brunswick v. Zimmerman* (CCA 3, 1935), 79 F. 2d 428.

A Pennsylvania county court *does not have inherent power to deny admission to its bar;* a member of the Bar of the Supreme Court of Pennsylvania who is of good moral character and whose admission to the county bar has been approved by the local examining board *has a right*

to be admitted to that bar: *Clarke Case* (1947) 357 Pa. 603, 55 A. 2d 318.

2. The question whether a county court "principal office" requirement for admission to its bar (which creates a complete monopoly for the local bar and compels every litigant to retain local counsel), is constitutionally objectionable, has never been passed upon by this Court. It is an important question not only to the petitioner but also to the thousands of lawyers in Pennsylvania, and this case is, in one sense, a test case. As of June, 1947, in 24 of the 67 counties in Pennsylvania, the county courts had adopted local rules restricting admission to the county bar to lawyers who had their "principal" or their "sole" office in the county: "*Restrictions on Admission to the Bar*", *Report of the Pennsylvania Bar Association's Committee on Legal Education and Admission to the Bar* (1947), 18 Pa. Bar Assn. Quarterly, 359, 362; 52nd Annual Report of Pennsylvania Bar Association (1947) Vol. 53, pages 91 and 210, 213.*

We recognize that this Court has consistently held that the qualifications for admission to a state bar are solely determinable by the state, and that admission to the bar of the state's highest court is in the control of that court: *Bradwell v. State* (1872) 16 Wall. 130; *Re Lockwood* (1894) 154 U. S. 116; *Re Summers* (1945) 325 U. S. 561.

But here the petitioner *has* met the state's requirements, he *has* been admitted to the bar of the highest court in the state, and under the state statute (Act of July 11, 1923, P. L. 1069, quoted in summary statement and printed in appendix) this fact, upon his approval by the local examining board, qualifies him "for admission to practice as an attorney-at-law in every other court of this Commonwealth." In addition, he resides in Montgomery County and maintains a law office there. Certainly neither the local board nor the county court can destroy his right of admis-

* As this report may not be readily available, petitioner is filing reprints of it with this petition for the convenience of the Court in the event the Court desires to refer to it.

sion by setting up rules which are arbitrary and unreasonable and have no relation to his moral character or his professional attainments. The question presented by this petition could not come up from any state except Pennsylvania because in the other 47 states a lawyer who meets the state requirements for admission to practice, and is admitted to the bar of the highest state court, is free to appear in any other court in that state: Report, "*Restrictions on Admission to the Bar*", supra. The question could not have arisen in Pennsylvania until recently, because under the *Act of May 8, 1909, P. L. 475,** and prior to the 1923 Amendment to it, admission to the Bar of the Supreme Court of Pennsylvania "operated without more as an admission to all state courts": *Stewart v. Bechtel, Prothonotary* (1948) 360 Pa. 123, 127, 61 A. 2d 514, 515.

The question now comes up for the first time in this Court whether a county court principal office rule which gives to the home town talent a 100% monopoly on their own terms of all civil and estate matters which arise in the county courts, to the detriment of petitioner and other lawyers whose clients prefer their services, can withstand the impact of the Fourteenth Amendment. We respectfully suggest that it is desirable for this Court to consider and answer the question.

WHEREFORE petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered June 24, 1949, affirming the Order of the Court of Common Pleas of Montgomery County, Pennsylvania.

ROLAND J. CHRISTY,
Petitioner

By LAURENCE H. ELDREDGE,
Attorney for Petitioner.

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* The text of which is printed in the appendix to this petition.

APPENDIX

Pennsylvania Act of May 8, 1909, P. L. 475:

"AN ACT

"To provide that admission now had or that may hereafter be had to practice as an attorney-at-law in the Supreme Court of this Commonwealth shall of itself, without more, operate as an admission of such attorney as an attorney-at-law in every other court of this Commonwealth; and to provide that disbarment or suspension of any attorney by the said Supreme Court shall of itself, without more, operate as a disbarment or suspension of such attorney as an attorney in every other court of this Commonwealth.

"Section 1. Be it enacted, &c., That admission now had or that may hereafter be had to practice as an attorney-at-law in the Supreme Court of this Commonwealth shall of itself, without more, operate as an admission of such attorney as an attorney-at-law in every other court of this Commonwealth, without any other or further action by such other courts or by such attorney.

"Section 2. That disbarment or suspension of any attorney-at-law by the Supreme Court of this Commonwealth shall of itself, without more, operate as a disbarment or suspension of such attorney as an attorney-at-law in every other court of this Commonwealth, without any other or further proceeding being required to be had in such other courts.

"Section 3. All acts or parts of acts inconsistent herewith are hereby repealed.

"APPROVED—The 8th day of May, A. D. 1909.

"EDWIN S. STUART."

Pennsylvania Act of July 11, 1923, P. L. 1069, amending Section 1 of the Act of 1909 to read as follows:

"Section 1. Be it enacted, &c., That admission now had or that may hereafter be had to practice as an attorney-at-law in the Supreme Court of this Commonwealth shall, upon the approval of the local examining board, qualify such attorney for admission to practice as an attorney-at-law in every other court of this Commonwealth, and upon such approval shall operate as an admission of such attorney in any other court of this Commonwealth upon his filing, in the office of the prothonotary or clerk of said court, a certificate of admission in the Supreme Court and a certificate of approval from the local examining board and the payment to such prothonotary or clerk of a fee of one dollar. Such certificate shall be granted by the prothonotary of the Supreme Court, upon application and the payment of a fee of one dollar, to any person legally entitled thereto, and shall be in the following form:

Know All Men By These Presents, That..... was duly admitted to practice as an attorney-at-law in the Supreme Court of the Commonwealth of Pennsylvania on the .....day of....., and that he is now a qualified member in good standing.

Witness my hand and official seal this.....day of....."